IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS FRANGOS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Case No.* 23/68).

Public Officers—Appointments and Promotions—Post of Director-General Ministry of Foreign Affairs—High office—Very wide discretionary powers of the appointing authority i.e. the Public Service Commission in selecting for appointment to such office the best candidate—Applicant, already in the service of the Ministry of Foreign Affairs, possessing more academic qualifications and more other additional qualifications—Interested Party an outsider to the said Ministry and less academically qualified—But possessing a varied and longer administrative experience, having passed, also, various public service examinations—Duties of the said post requiring, to a very large extent, administrative experience and ability—In view of the foregoing matters it was reasonably open to the Respondent Public Service Commission to appoint the Interested Party instead of, and in preference to, the Applicant—Cf. also infra.

Public Officers—Appointments and Promotions—Powers of the appointing authority viz. the Public Service Commission—Effecting appointment by relying, to a certain extent, on the personal views of its members about the candidate (appointee)—Views as aforesaid not inconsistent or rather consistent with the contents of the personal file of such candidate—Such course held to be correct on the basis of a principle of administrative law in Greece now incorporated into the Greek legislation i.e. Article 101 *of the relevant Code—There being in Cyprus no legislative provision to the contrary effect—It was reasonably open to the Commission to act as it did in the circumstances of the instant case—Adherence to such principle logically consistent with, and required by the proper discharge of the duty incumbent on the*

Respondent Commission to select the best candidate—This Court would have given effect to such principle even if it was merely a statutory principle in Greece—Because in the absence of any provision or established rule governing a particular issue, a Judge of an administrative Court would have to give to such issue a solution which appeared to be logical and just (see Dendias, on Administrative Law, 5th ed. Vol. A p. 72).

Administrative Court — Administrative law — Principles of administrative law and legislative provisions in Greece—Whether and to what extent can or should be adopted by the Administrative Court in Cyprus—Powers of a Judge of such Court—In the absence of any provision or established rule governing a particular issue, the Judge would have to give to such issue a solution which appears to be logical and just—Cf. supra.

Public Officers—Appointment (or promotion) to the post of Director-General of the Ministry of Foreign Affairs—Scheme of service dated June 15, 1967*—Qualifications required—Paragraph* 1(c) *of said scheme requiring "an all round education and a wide knowledge of political, financial and international affairs"—Meaning and effect of—Standard of such knowledge not very high—In view of the provisions of paragraph* (1)(a) *of the said same scheme (see the texts* post *in the judgment)—Sub paragraphs* (a) *and* (c) supra *must be read together—Mode of ascertaining such knowledge as that required by the said sub-paragraph (c)—Permissible to ascertain whether the candidates possess such knowledge by means of a thorough questioning at the relevant interview—Reasonably open to the Respondent Commission to treat the Interested Party as qualified under paragraph 1(c) of the Scheme in question.*

Public Officers—Appointments and promotions—Appointment to the post of Director-General Ministry of Foreign Affairs—No recent confidential reports on the Interested Party through no fault of his—No recommendations, either, by his superiors, for appointment to the said post—Still, it was reasonably open to the Respondent Commission, in the circumstances of this case, to proceed as it did, without requesting any further report.

Public officers—Appointments and promotions—Application for appointment not made in the prescribed manner i.e. by filling in Form "Gen. 6"—A mere irregularity not affecting in the circumstances of this case the relevant administrative action in any material particular—No ground for annulment of the sub judice *appointment.*

Practice and Evidence—Written statements signed by the Chairman of the Respondent Commission indicating material on the basis of which the sub judice *appointment was made—Properly admissible in the circumstances of this case—Not as evidence explaining the nature of reasons already recorded in the official minutes as in* Christou's *case,* infra*—But as being reasonably relevant to the issue before the Court and possibly of assistance to it in doing justice in the exercise of its jurisdiction on a recourse under Article* 146 *of the Constitution* (*see* Kyriakides and The Republic, 1 *R.S.C.C.* 66, *at p.* 69).

Words and Phrases—"............ wide knowledge of political, financial and international affairs" ("εὐρεῖα γνῶσις πολιτικῶν, οἰκονομικῶν καὶ διεθνῶν ὑποθέσεων") *in paragraph* 1(*c*) *of the Scheme of Service, dated June* 15, 1967, *regarding the appointment (or promotion) to the post of Director-General of the Ministry of Foreign Affairs.*

Dismissing this recourse of the Applicant against the appointment of the Interested Party to the post of Director-General of the Ministry of Foreign Affairs, but making no order as to costs in view, *inter alia*, of the impressive academic qualifications of the unsuccessful Applicant, the Court:-

Held, I: Regarding the submission on behalf of the Applicant that the Interested Party was not eligible for appointment because he did not apply for such appointment in the prescribed manner by filling in form "Gen. 6".

(1) I quite agree that it was irregular on his part not to apply by means of such form "Gen. 6" as required. But in my opinion, such irregularity did not influence materially the relevant administrative action of the Respondent Commission, and, therefore, I cannot, and should not, annul on that ground the appointment of the Interested Party (see, *inter alia*, Odent on Contentieux Administratif 1966 p. 1136).

(2) Indeed, the Respondent was not prevented in any material respect by the said irregularity from carrying out properly its task of evaluating properly the Interested Party as a candidate, because his personal file which was before the Respondent when it reached its *sub judice* decision provided all the relevant information which the Interested Party would have given had he filled in the prescribed Form "Gen. 6" (*supra*).

Held, II: As to the argument that in the absence of recent

confidential reports concerning the Interested Party and in the absence, as well, of any recommendation by his superiors for his appointment in question to the post of Director-General of the Ministry of Foreign Affairs, the Respondent Commission ought to have requested from them an up-to-date report about him:

(1) It is true that there are no confidential reports in respect of the Interested Party after 1959 because no such reports were being prepared since 1960 in respect of public officers such as the Interested Party holding the post of District Officer in the service of the Ministry of Interior. It is not the fault of the Interested Party, therefore, if such reports do not exist; in any case, his past record as shown from his personal file as well as from, in particular, a "special confidential report" about him prepared in 1957, show clearly that even before 1960 he was an officer of great merit.

(2) On the other hand, the application for appointment of the Interested Party was forwarded to the Respondent Commission, without any comment, by his immediate superior, the Director-General of the Ministry of Interior; so it may be taken that nothing existed which would render the Interested Party unsuitable for appointment to the post of Director-General of the Ministry of Foreign Affairs. Nor was it necessary for the Respondent Commission to make further enquiries regarding the progress of the Interested Party in the public service, because it had before it his personal file the contents of which established clearly that by already 1960 he (the Interested Party) was a public officer possessing to a very high degree the ability and experience that would render him suitable for the *sub judice* appointment to the post of Director-General of the Ministry of Foreign Affairs.

(3) For these reasons I am of the view that it was open to the Respondent Commission to proceed to reach its *sub judice* decision without requesting any further report about the Interested Party from his superiors. (The decisions of the Greek Council of State Nos. 136/1931 and 267/1933 *distinguished*); for the same reason the principles set out in Stasinopoulos "Lectures on Administrative Law" ("Μαθήματα Διοικητικοῦ Δικαίου") 2nd edn. 1957 at p. 347 *distinguished*).

Held, III: As to the admissibility of several statements signed by the Chairman of the Respondent Commission, as well as to

the admissibility of a letter of the Respondent Commission dated August 2, 1969 *addressed to the Attorney-General and which documents were all produced in Court:-*

(1) It seems that counsel for the Applicant felt that there was not any reason to doubt the veracity of those who signed these documents. Nor did he object—and I think he acted quite rightly in this respect—to their production; the first statement of the Chairman of the Respondent Commission, dated November 9, 1968, was produced as a result of the procedure agreed upon between counsel, instead of hearing Mr. Pr., a member of the Commission, as a witness; and, in any case, this statement, as well as all the subsequent statements of the Chairman and the said letter of the Commission to the Attorney-General were, in the light of the nature and circumstances of the present case, properly admissible as being reasonably relevant to the issues before the Court and possibly of assistance to it in doing justice in the exercise of its jurisdiction on a recourse under Article 146 of the Constitution (see *Kyriakides and The Republic*, 1 R.S.C.C. 66 at p. 69).

(2) Moreover, the documents in question are not evidence (as in *Christou and The Republic* (1969) 3 C.L.R. 134), explaining the nature of reasons already recorded in the official minutes; I have treated them, and I have relied on them, solely as information indicating what was the material before the Respondent Commission when it reached its *sub judice* decision.

Held, IV: Regarding the fact, definitely established by the aforesaid documents (supra *under III*), *that, in selecting the Interested Party for the appointment in question, the members of the Respondent Commission adopted the course of relying, to a certain extent, on their own personal views about the said candidate:*

(1) This aspect of the case has presented me with a matter requiring careful consideration; in the end, on the basis of valuable guidance derived from the relevant principle of administrative law in Greece, I have reached the conclusion that, in the circumstances of this particular case, and in the absence of any provision of law to the contrary effect, the course adopted by the members of the Commission was properly open to them and it does not amount to a sufficient reason for annulling the appointment of the Interested Party to the post of Director-General of the Ministry of Foreign Affairs.

(2) In adopting such principle I have borne duly in mind that in Greece matters concerning public officers have been regulated, since many years ago, by legislation (see, regarding the point in issue Article 101 of the relevant Code in Greece: "Κῶδιξ Καταστάσεως Δημοσίων Διοικητικῶν Ὑπαλλήλων καὶ Ὑπαλλήλων Νομικῶν Προσώπων Δημοσίου·Δικαίου"); but it is quite clear that the principle concerned evolved, at first, as a rule of administrative law, by means of case-law, before it was incorporated into legislation (see the *Decisions of the Greek Council of State* Nos.: 723/1938, 923/1955 and 1809/1958).

(3) I would, moreover, observe that adherence to this principle is in my opinion logically consistent with, and required by, the proper discharge by the Respondent Commission of its duty to select the best persons for the filling of vacancies in the public service; so even if the origin of this principle in Greece were not to be case-law but merely a statutory provision, again I would have adopted such principle; in doing so, I would, of course, not be treating Greek legislation as directly applicable in these proceedings, but I would be using such legislation as a guide for the purpose of deciding an issue of administrative law arising herein; this course would have been open to me because, in the absence of any provision or established rule governing a particular issue, I would have as a Judge of an administrative Court, to give to such issue a solution which appeared to be logical and just (see Dendias on Administrative Law, 5th edn. Vol. A p. 72).

(4) (a) Lastly, this is a case in which the aforesaid personal views of the members of a collective organ such as the Respondent Commission regarding the merits of the candidate concerned—the Interested Party—were obviously consistent with the contents of his personal file; and, in any case, these views were not the sole or even the main factor which led the Respondent to their said conclusion about the Interested Party, but they were weighed together with other, and more weighty considerations; moreover, the Commission recorded in their *sub judice* decision the factor on which the said personal views of the members were based.

(b) It is correct that the relevant statement in the decision of the Respondent Commission is a short one; but I do not think that it was necessary to go into any greater detail once the personal views of the members of the Commission were not in the least inconsistent, but, on the contrary they were

fully consistent with the conclusion to be drawn from the contents of the personal file of the Interested Party (cf. the decision of the Greek Council of State No. 1821/1966).

Held, V: Regarding the submission by counsel for the Applicant to the effect that it was not open to the Respondent Commission on the material before it to find that the Interested Party possessed the qualification specified in paragraph 1(*c*) *of the relevant scheme of service viz. an all-round education and a wide knowledge of political, financial and international affairs:*

(1) It is necessary to examine what is exactly the standard of such education and knowledge specified in paragraph 1(c), *supra*. For this purpose this sub-paragraph (c) must be read together with sub-paragraph (a) of the said same paragraph 1. The contents of sub-paragraph (c) have already been referred to (*supra*) and need not be repeated; sub-paragraph (a) provides, in effect, that a candidate is eligible for appointment if he has either a diploma or degree of a university or of an equivalent institution, or he is a barrister-at-law, preference to be given, where all other qualifications are of equal nature, to those who possess a diploma or degree in law (including being a barrister-at-law), in political science or in economics, or: general education of a level not below that possessed by graduates of secondary schools, and, in addition to such education a long and satisfactory service in the public service.

(2) By reading together sub-paragraphs (a) and (c) of the scheme of service (*supra*) it becomes clear, in my view, that the all-round education and the wide knowledge of political, financial and international affairs required by the latter sub-paragraph (c) cannot be anything that is beyond the educational background of a candidate who is eligible by virtue of the second part of the former sub-paragraph (a) viz. one who has general education of secondary school level and has had a long and satisfactory service in the public service; it is not reasonably possible to hold that the Council of Ministers, when they adopted the relevant said scheme of service of June 15, 1967 intended to introduce by means of the vague terms in which sub-paragraph (c) is framed any requirement for special qualifications incompatible with the minimum of the educational qualifications which were defined, in very precise terms, in sub-paragraph (a); in other words, the education and knowledge required under sub-paragraph (c) cannot be more than that which a person possessing the minimum of

educational qualifications specified in sub-paragraph (a) can acquire, in the ordinary course of life, through relevant reading and experience and without any special studies for the purpose; otherwise the second part of sub-paragraph (a) (*supra*) should have been omitted altogether.

(3) Bearing in mind the foregoing and applying to the facts of the present case the provisions of the aforesaid sub-paragraph (c), I have reached the conclusion that on the material before the Respondent Commission it was reasonably open to them to treat the Interested Party as qualified under paragraph 1 (c) of the relevant scheme of service and that, in the circumstances, I am not entitled to interfere with its finding in this respect (see, *inter alia, Josephides and The Republic,* 2 R.S.C.C. 72).

(4) As stated in the written statement of the Chairman of the Respondent Commission *exhibit* 8 (which was produced with the consent of counsel for the Applicant in reply to a request by him to be informed as to how the Commission felt satisfied that the Interested Party possessed the qualifications prescribed by paragraph 1(c) (*supra*)—the Commission relied in this respect mainly on the answers given by the Interested Party to a multitude of questions put to him when he was interviewed by the Commission.

In my opinion, in view of the already described standard of education and knowledge required under the said paragraph 1(c) it was possible to ascertain possession thereof by means of a thorough questioning at an interview.

Held, VI: As to the proposition that the higher the office for appointment the wider the discretion of the appointing authority:

Before concluding I might refer in this respect to the Decision of the Greek Council of State No. 2338/1964; it was stressed therein that in selecting the most suitable candidate for appointment to high office in the administrative structure the appointing authority is vested with quite wide discretionary powers.

Held, VII: Final conclusion as to whether or not there has been in this case a defective exercise by the Respondent Commission of its discretionary powers in selecting for the sub judice *appointment to the post of Director-General of the Ministry of Foreign Affairs the Interested Party Mr. Veniamin instead of, and in preference to, the Applicant.*

(1) (a) Having in mind all the foregoing matters, as well as all the other relevant considerations, including the fact that the Interested Party had passed various public service examinations (whereas the Applicant did not), and in the light, *also, of the duties appertaining to the post of Director-General* of the Ministry of Foreign Affairs, which duties require to a very large extent administrative experience and ability, and considering in favour of the Applicant that his academic qualifications are impressive—the Interested Party being in this respect inferior—, I hold, nevertheless, that it was reasonably open to the Respondent Commission to find that the Interested Party was the most suitable candidate for appointment to the post in question and to select him accordingly; and I hold, therefore, that no ground exists entitling, or requiring, me to interfere with the result of the exercise of its discretion in this connection.

(b) In taking this view I have adopted what has been laid down repeatedly to be the proper judicial approach to a matter of this nature (see, *inter alia, Triantafyllides and The Republic*, reported in this Part at p. 235 *ante*; and *Ch. Georghiades and The Republic*, reported in this Part at p. 257 *ante;* and the case-law referred to therein). I refer also to the Decision of the Greek Council of State No. 2338/1964 cited *supra* under VI.

(2) For all the above reasons the present recourse fails and it is dismissed accordingly; but, bearing in mind all the circumstances of the case, and particularly the fact that the Applicant in view of his many academic qualifications and of his being already, at the material time, in the service of the Ministry of Foreign Affairs, must have felt, and naturally so, aggrieved by the appointment of the Interested Party—who was an outsider as regards such service and less qualified academically—and that he was, therefore, entitled to place his grievance before this Court I am not prepared to make any order as to costs.

Application dismissed.
No order as to costs.

Cases referred to:

Kyriakides and The Republic, 1 R.S.C.C. 66, at p. 69;

Christou and The Republic (1969) 3 C.L.R. 134;

Josephides and The Republic, 2 R.S.C.C. 72;

Triantafyllides and The Republic, reported in this Part at p. 235, *ante;*

Ch. Georghiades and The Republic, reported in this Part at p. 257 *ante;*

Decisions of the Greek Council of State Nos.: 136/1931, 267/1933, 723/1938, 923/1955, 1809/1958, 2338/1964 and 1821/1966.

Recourse.

Recourse against the decision of the Respondent to appoint to the post of Director-General Ministry of Foreign Affairs the Interested Party, Mr. Chr. Veniamin, in preference and instead of the Applicant.

A. Triantafyllides with *M. Christofides*, for the Applicant.

K. Talarides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this case the Applicant who, at the material time, was a Counsellor (Consul-General), grade 'A', in the service of the Ministry of Foreign Affairs, complains against the appointment of the Interested Party, Christodoulos Veniamin, to the post of Director-General of the said Ministry.

This appointment was made by the Respondent Public Service Commission on the 19th October, 1967 (see the copies of its relevant minutes, *exhibit* 3; in these minutes, as well as in other relevant records, the surname of the Interested Party appears as "Benjamin").

As it is stated in the Respondent's minutes, it was decided on the 19th July, 1967, to advertise the then existing vacancy in the post in question; such post is a "first entry and promotion" post (see the relevant scheme of service, *exhibit* 2).

On the 11th October, 1967, there were interviewed five candidates, two of them being the Applicant and the Interested Party. Four of these candidates, including the Applicant,

were, already, in the service of the Ministry of Foreign Affairs, two of them being senior, in grade, to the Applicant. The Interested Party was, at the time, holding the post of District Officer, in the service of the Ministry of Interior, and he was posted at Limassol (on an acting basis since August, 1960, and on a substantive basis since January, 1961).

Then, on the 19th October, 1967, the Respondent Commission decided to appoint the Interested Party as Director-General of the Ministry of Foreign Affairs.

It is convenient to deal, first, with the Applicant's contention that the Interested Party was not eligible for appointment because he did not apply for appointment in the prescribed manner:

It is correct that when the vacancy in the post concerned was advertised in the Official Gazette on the 28th July, 1967 (Not. 1038) it was stated in the advertisement that applications for appointment ought to be made by filling in form "Gen. 6" and be submitted to the Commission through the Head of Department of any candidate who happened to be already a member of the public service. It is, also, a fact that though the Interested Party did apply for appointment through his Head of Department, the Director-General of the Ministry of Interior (see the relevant letter of the Interested Party dated the 10th August, 1967, *exhibit* 4), he did not apply—as the Applicant did (see *exhibit* 5)—by filling in form "Gen. 6'.

This form, which bears the heading " Application for Appointment to the Cyprus Civil Service", is in the nature of a questionnaire which, when duly answered, provides a lot of relevant details about a candidate for appointment.

I quite agree that it was irregular on the part of the Interested Party not to apply for appointment by means of form "Gen. 6"; but, in my opinion, such irregularity did not influence materially the relevant administrative action of the Respondent, and, therefore, I cannot, and should not, annul the appointment of the Interested Party on this ground (see, *inter alia*, Odent on Contentieux Administratif (1966) p. 1136); the Respondent was not prevented, in any material respect, by the said irregularity from carrying out properly its task of evaluating properly the Interested Party as a candidate, because a mere perusal of his personal file (see *exhibit* 9), which was before the Respondent Commission when it reached its *sub judice*

decision, can provide all the relevant information which the Interested Party would have given had he filled in form "Gen. 6", when applying for the post to which he was appointed by virtue of such decision; and as a matter of fact, in his personal file there are to be found, amongst other material records, a number of forms "Gen. 6" which he filled in on previous occasions when he applied for appointments in the course of his career in the public service.

It is useful, before dealing with any other issue, to refer to certain facts regarding the careers and qualifications of the Applicant and the Interested Party, as they appear from the material before me, which was, also, before the Respondent Commission:

The Applicant joined the public service when he was appointed as Counsellor (Consul-General), grade B, with effect as from the 18th May, 1961; he was promoted to Counsellor (Consul-General), grade A, with effect as from the 1st May, 1965.

He was initially posted at the Cyprus Embassy in Bonn and, then, from 1962 until 1966 he was posted at the Cyprus Embassy in Washington; in 1966 he was posted at the Ministry of Foreign Affairs in Nicosia.

Before becoming a public officer he had served from 1944 to 1946, and for part of 1950, with the Bank of Cyprus, Ltd.; and from 1950 to 1951, as well as from 1955 to 1959, he was in the employment of the Hellenic Mining Co., Ltd.

The academic qualifications of the Applicant are impressive: Having graduated from a secondary education school in Cyprus, he obtained the diploma of the Highest School of Economics and Commercial Sciences in Athens, the degree of M.A. (Economics) from the University of California and a doctorate from the University of Cologne. He has also passed the Book-Keeping (Intermediate) Examination of the London Chamber of Commerce.

Regarding his knowledge of foreign languages, he has passed both the Ordinary Examination and the Distinction Examination in English, in Cyprus; and, as stated in his application for appointment, he knows, also, German and French (the latter language he was still studying a few months before the *sub judice* decision—see the statement by the Applicant in

section I of his confidential report dated 12th May, 1967, *exhibit* 6).

The Interested Party does not possess as many academic qualifications as the Applicant: He has graduated from a secondary education school and is only a Barrister-at-Law, of the Middle Temple, London.

Regarding his knowledge of foreign languages, he, also, has passed the aforementioned two English language examinations as well as the Cambridge Proficiency in English Examination, he passed, too, the Preliminary Examination and the Ordinary Examination in Turkish, in Cyprus; and he has a fair knowledge of the French language (see the document numbered 72, in red, in his personal file).

He passed the following public service examinations: The General Orders and Colonial Regulations Examination, the Financial Instructions Examination and the Statute Laws of Cyprus Examination for Administrative Assistants. The Applicant does not possess these public administration qualifications, which, though they owe their origin to the time when Cyprus was still a British Colony, they are still of importance for public service purposes, as most of the provisions to which they relate continue to be applicable for purposes of administration; such qualifications are not, however, expressly required, by the relevant scheme of service (*exhibit* 2), for appointment to the post involved in these proceedings.

The Interested Party entered the public service in 1942, nineteen years before the Applicant. He started as a temporary clerical assistant and having been engaged, all along, in various capacities, with administrative work, he, eventually, became a District Officer, with effect as from the 1st January, 1961. The contents of his personal file, as well as the details regarding his service which are stated in the appropriate part of the confidential reports file concerning him (*exhibit* 7), indicate that he must have acquired a wide general knowledge while dealing with various administrative matters. There are, also, in the said files frequent references to his administrative abilities; for example, in 1960 (see "red 196" in his personal file) the Administrative Officer of the Ministry of Interior (who would now be described as the Director-General of such Ministry) wrote the following in relation to a request by the

Applicant for additional salary increments: " Mr. Benjamin was posted to this Ministry as an Assistant Secretary in June last year. In fact, however, not only have I used him with the Minister's consent as a Deputy but he has also been supervising the work of the two other Assistant Secretaries. In this capacity he has given full satisfaction; and in view of his high standard of performance and the additional responsibilities he has assumed, I strongly recommend that he be given additional increments.' As you are aware, Mr. Benjamin was called to the Bar in February 1958 and his legal background has been of the utmost service to the Ministry...." So, as far back as 1960, the Interested Party had already been assigned duties of a deputy to an officer who was, in essence, a Director-General of a Ministry.

The confidential reports files in respect of the Applicant and the Interested Party are before me. The only relevant confidential report regarding the Applicant is that dated the 12th May, 1967 (*exhibit* 6), in which he is described, by the then Acting Director-General of the Ministry of Foreign Affairs, as "a very mature officer, very efficient and absolutely reliable" and as one that would "shape into a good diplomat".

There are no confidential reports in respect of the Interested Party after 1959 because—and this did not appear to be in dispute—no confidential reports were being prepared, since 1960, in respect of District Officers.

It is not the fault of the Interested Party that no confidential reports were prepared in respect of him after 1959; in any case, his past record, as shown from his personal file as well as from, in particular, a "special confidential report" about him prepared in 1957 (see his confidential reports file, *exhibit* 7) show clearly that even before 1960 he was already an officer of great merit.

It has been submitted that the Interested Party was not appointed in conformity with the relevant scheme of service (*exhibit* 2) in that, in the circumstances, it was not open to the Respondent Commission to feel duly satisfied that he did possess an all-round education and a wide knowledge of political, financial and international affairs (Πολυμερὴς μόρφωσις καὶ εὐρεῖα γνῶσις πολιτικῶν, οἰκονομικῶν καὶ διεθνῶν πραγμάτων); this being qualification 1(c) in the scheme of service.

In paragraph 1 of the scheme of service there are set out the educational qualifications required; I need not state them

now in full because apart from the point raised in relation to the Interested Party regarding the aforementioned qualification (specified in sub-paragraph (c) of the said paragraph 1) it is common ground that both the Applicant and the Interested Party possess the other qualifications required under such paragraph.

By paragraph 2 of the scheme of service there is required, as another essential qualification, ability to supervise personnel and wide administrative experience ('Ικανότης ἐποπτείας προσωπικοῦ καὶ εὐρεῖα διοικητικὴ πεῖρα).

I would like to stress that whereas under paragraph 1(c) there is required a wide *knowledge* of political, financial and international affairs, by paragraph 2 there is required wide administrative *experience.*

The importance of administrative *experience* is easily appreciated when one considers the diverse and very responsible duties of the post concerned, which, as set out in the scheme of service, appear to be mainly of an administrative nature.

Before dealing with the aforesaid submission in connection with the possession by the Interested Party of qualification 1(c) it is necessary to refer at some length to the relevant minutes of the Respondent and to certain developments in the course of the proceedings in this case, as well as to deal with some collateral issues arising in relation thereto:–

The Respondent Commission has recorded in its minutes of the 19th October, 1967, that it

> " considered carefu ly the merits, qualifications and experience of the candidates interviewed on the 11.10.67"— who included the Applicant and the Interested Party— "their general knowledge, as demonstrated by them during the interview and as reflected in their personal files and the Annual Confidential Reports, having regard to the requirements of the scheme of service. The scheme of service requires, *inter alia,* wide administrative experience, sound education and wide knowledge of political, financial and international affairs to enable the holder of the post to carry out competently the difficult and multifarious duties attaching to it. The Commission had at the same time in mind the abilities of each candidate and the opportunities he has had to be directly responsible for

the supervision of staff, as he will be called upon to supervise and administer an important Ministry which is composed of staff most of whom possess high eduational qualifications."

Then after setting out, in the same minutes, the relevant details regarding the service of each candidate as a public officer, it proceeded to record the following:-

"The Commission, bearing in mind the above, decided unanimously that Mr. Chr. Benjamin"—the Interested Party—"was on the whole the best and that he be appointed........ Mr. Benjamin has been holding the post of District Officer at Limassol since 1961 carrying out his administrative (and in present circumstances political) duties to an excellent degree. He also proved during the interview to have a clear mind and sound judgment".

The Commission, in selecting as "on the whole the best" the Interested Party, does not appear to have found any difficulty in choosing between him and the Applicant. A difficulty with which it was faced was that there was before it a letter of the Minister of Foreign Affairs (see *exhibit* 4) by which the Minister was recommending another of the candidates before the Commission; the Commission gave *prima facie* cogent reasons for not selecting for appointment such candidate, and as he has not made a recourse against its *sub judice* decision I need not state them in this judgment; it may, however, be relevant to note that such candidate was at the time senior in grade to the Applicant and had, also, been acting as the Director-General of the Ministry of Foreign Affairs for more than a year prior to the date of the said decision.

During the hearing, counsel for the Applicant summoned a member of the Respondent Commission, Mr. D. Protestos, as a witness; counsel stated that he proposed to put to the witness questions as to how the Commission satisfied itself at the interviews of the candidates, or otherwise, that the Interested Party possessed the said qualification 1(c), and, also, as to whether the Commission knew of the nature of the work performed by the Applicant when he was in the service of the Bank of Cyprus, Ltd., and the Hellenic Mining Co., Ltd., prior to his appointment in the public service.

It was suggested, at that stage, by counsel for the Respondent that these two questions be conveyed to the Commission and that the Commission should reply to them in writing; counsel for Applicant agreed to such a course.

As a result, on the 9th November, 1968, there was filed a relevant statement signed by the Chairman of the Commission (*exhibit* 8).

Regarding the first question it was stated that the Commission

> " was satisfied that the Interested Party possessed qualification (c) laid down in the scheme of service i.e. wide education and very wide knowledge on political, financial and international matters through a great number of questions put to him and the relevant answers received during the interview.
>
> It is not possible to repeat now the questions put to the Interested Party or the answers received after such a long time because no shorthand notes have been kept or are possible to be kept at such interviews.
>
> The Interested Party was the representative of the Republic in various Committees formed under the Treaty of Establishment.
>
> In addition to the above, the Interested Party has had long and wide administrative experience both in the District Administration and the ex-Secretariat. He has performed the duties of District Officer Limassol since August 1960 with excellent results and has also proved his abilities to supervise staff. These qualifications are considered essential for the post of Director-General Min. of Foreign Affairs".

Regarding the second question it was stated that the Commission

> " knew that the Applicant was the Personnel Officer when in the service of the Hellenic Mining Co. prior to his appointment in the Government Service. The Commission was not aware of the work performed by Applicant when in the service of the Bank of Cyprus but this is considered of a very minor significance".

After this statement was filed counsel for the Applicant did not insist on Mr. Protestos, or anybody else, being called to give evidence. Counsel continued, however, to insist on his contention that, in the circumstances, it could not be held that the Commission had been properly satisfied that the Interested Party possess qualification 1(c), in the scheme of service.

Judgment was reserved; but, while perusing the material before me in the course of studying the case with a view to preparing my judgment, I discovered that the personal files of the Applicant and the Interested Party, which had been expressly referred to by the Respondent Commission in its minutes of the 19th October, 1967, had not been produced. Moreover, in view of the nature of the jurisdiction under Article 146 of the Constitution, under which the present recourse has been made, I felt that I had a duty, not only to call for the production of such files, but, also, to call upon the Respondent to place before the Court the material on the basis of which it reached the conclusion that the Interested Party, as District Officer at Limassol, carried out his duties "to an excellent degree", as stated in its said minutes, and "with excellent results and has also proved his abilities to supervise staff", as stated in the already referred to written statement of the Chairman of the Respondent dated the 9th November, 1968. I directed, therefore, that the hearing of the case be re-opened accordingly.

At the re-opened hearing the personal files of the Applicant and the Interested Party were produced (as *exhibit* 9) and there was produced, by counsel for the Respondent, a statement signed by the Chairman of the Respondent Commission and dated the 5th April, 1969 (see *exhibit* 10).

It was stated therein that the Commission

> "reached the conclusion that the Interested Party as District Officer at Limassol carried out his duties 'to an excellent degree' and 'with excellent results' through questions put to him during the interview and the relevant answers in connection with his work and the difficult problems (*both Administrative and political*) which Interested Party had to face during his service at Limassol. The Commission was aware of the high degree he performed these duties through personal knowledge of his abilities especially during the political situation in 1964".

It can be taken for granted, without any room for doubt, that "the political situation in 1964", referred to by the Commission, is the anomalous situation which resulted due to intercommunal conflict in Cyprus as from December, 1963, and which was still of a very acute nature in 1964.

This statement of the Chairman of the Respondent continued as follows:-

"As stated in my statement dated 9.11.68, the Interested Party was the representative of the Republic in various Committees formed under the Treaty of Establishment and it is well known that he has performed very good work. It was also known to the Commission how tactfully the Interested Party handled the political situation in the District of Limassol.

The Commission reached further the conclusion that the Interested Party as District Officer at Limassol '............. has proved his abilities to supervise staff' having regard to the large number of staff he had under him............."

Such staff was described and, then, this was added:-

"It was well known to the Commission that the Interested Party was supervising the staff referred to above to the best satisfaction of his superiors. The fact that the then Minister of the Interior tried to prevent the appointment of the Interested Party to the post of Director-General, Min. of Foreign Affairs so as not to lose an outstanding officer, should not be overlooked. This proves how well the Interested Party was carrying out his duties as District Officer.

In the mind of the Commission there was no doubt that Interested Party was by far the best of all candidates for the post of Director-General Ministry of Foreign Affairs".

The statement, in question, concluded by referring to a development which was clearly subsequent to the *sub judice* decision of the Commission, viz. that the Minister of Foreign Affairs had appreciated the services of the Interested Party, as the Director-General of the Ministry, after he had seen him at work. I regard such development as entirely irrelevant to the outcome of the present proceedings.

This statement, of the 5th April, 1969, was made part of the record before the Court, subject to such parts of it which are not properly receivable in these proceedings being disregarded; I observed at the time that it was not clear to what extent the Respondent acquired knowledge of the matters stated therein through questions put to the Interested Party, when he was interviewed for the post concerned, or to what extent any member, or members, of the Respondent had personal knowledge of any such matters, and, if so, in what circumstances, and in what capacity, such knowledge had been acquired; and I directed that evidence be adduced by the Respondent's side in order to clarify the situation.

On the 24th July, 1969, yet another statement signed by the Chairman of the Respondent Commission, and dated the 2nd May, 1969, was produced (see *exhibit* 11), instead of any witness being called. It was stated therein that

> "The knowledge of the Commission about the abilities of the Interested Party was derived from
>
> (i) the interview
>
> (ii) his personal file
>
> (iii) from official contacts the Commission had with the Interested Party in the performance of his duties in his capacity as District Officer during the time he was District Officer at Limassol".

It can be safely presumed, without it being properly disputable, that over a period of seven years while the Interested Party was District Officer at Limassol there must have been several occasions on which he had official contacts with the Commission regarding matters affecting the personnel of whom, in his capacity at the time, he was the Head of Department.

After the statement dated the 2nd May, 1969, was produced, I ruled that, subject to what might be put forward by counsel in the course of their final addresses, there was such material before the Court so as not to render it necessary to have any evidence called, as directed on the 5th April, 1969.

Just before the commencement of the final addresses counsel for the Respondent, in an effort to assist the Court by placing before it all relevant material, produced a letter addressed to

the Attorney-General of the Republic by the Commission, on the 2nd August, 1969 (*exhibit* 12) in which it was stated (a) that it has been the practice of the Commission to accept applications for appointment which are submitted by means of plain letters, and not by filling in the prescribed form, (b) that since 1960 there were not submitted confidential reports for any District Officer, (c) that there was not made by anybody any relevant written recommendation in favour of the Interested Party nor did the Commission seek the views of anybody, and (d) that the taking of effect of the appointment of the Interested Party, which was fixed to be as from the 15th November, 1967, had to be postponed until the 15th January, 1968, first at the request of the Interested Party—(see his letter dated the 8th November, 1967, in which he stated that he had to complete work in relation to amendments of legislation concerning water supplies and to plans for the re-organization of the services of the municipalities)—and later, again in the public interest, at the request of His Beatitude the President of the Republic and of the Minister of Interior.

I might comment straightaway on the just mentioned contents of the last document (*exhibit* 12) which was produced by counsel for the Respondent: Matter (a) relates to the question of the irregular manner in which the Interested Party applied for appointment to the post of Director-General of the Ministry of Foreign Affairs. As already stated in this judgment, I did not, in the circumstances of this case, find this irregularity to be of a fatal nature regarding the validity of the *sub judice* decision to appoint the Interested Party to such post; but, I must stress that I have not been influenced in reaching this view by the fact that it has been the practice of the Respondent Commission to accept irregular applications for appointment; such practice could not have saved the validity of the appointment of the Interested Party had I thought that in the present instance the irregularity involved was of a material nature. Matters (b) and (c) relate to the question as to whether or not the Respondent Commission acted correctly in selecting for appointment the Interested Party without further enquiries about him; I shall be dealing later on in this judgment with such question. Matter (d) shows that the Interested Party was, at the material time, entrusted with important work from which he could not be spared at once; may be this is a factor tending to indicate the merits of the Interested Party, but I cannot attribute to it any decisive importance.

Counsel for the Applicant did not apply for any direction on my part that either the Chairman of the Respondent Commission, or any other member of it, should be called before the Court to give oral evidence in relation to the statements of the Chairman of the Commission or to the letter of the Commission to the Attorney-General, which were produced, as aforesaid, in these proceedings. It seems that he felt that there did not exist any reason to doubt the veracity of those who signed these documents.

Nor did he object—and I think that he acted quite rightly in this respect—to their production; the first statement of the Chairman of the Commission (that dated the 9th November, 1968) was produced as a result of the procedure agreed upon between counsel, instead of hearing Mr. Protestos, a member of the Commission, as a witness; and, in any case, this statement, as well as the subsequent statements of the Chairman and the said letter of the Commission were, in the light of the nature and circumstances of the present case, properly admissible as being reasonably relevant to the issues before the Court and possibly of assistance to it in doing justice in the course of the exercise of its jurisdiction under Article 146 of the Constitution (see *Kyriakides* and *The Republic*, 1 R.S.C.C. 66, at p. 69).

Moreover, the documents in question are not evidence (as in *Christou* and *The Republic* (1969) 3 C.L.R. 134) explaining the nature of reasons already recorded in official minutes; I have treated them, and I have relied on them, solely as information indicating what was the material before the Respondent Commission when it reached its *sub judice* decision.

A thing which was definitely established by these documents is that, in selecting the Interested Party for appointment, the members of the Respondent Commission adopted the course of relying, to a certain extent, on their own personal views about one of the candidates before them, viz. the Interested Party; this aspect of the case has presented me with a matter requiring careful consideration; in the end, on the basis of valuable guidance derived from the relevant principle of administrative law in Greece, I have reached the conclusion that, in the circumstances of this particular case, and in the absence of any provision of law to the contrary effect, the course adopted by the members of the Commission was properly open to them and it does not amount to a sufficient reason for annulling the appointment of the Interested Party.

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In adopting such principle I have borne duly in mind that in Greece matters concerning public officers have been regulated, since many years ago, by legislation (see, regarding the point in issue, Article 101 of the relevant Code in Greece*); but it is quite clear that the principle concerned evolved, at first, as a rule of administrative law, by means of case-law, before it was incorporated into legislation.

I would, moreover, observe that adherence to this principle is in my opinion logically consistent with, and required by, the proper discharge of the duty of the Respondent Commission to select the best persons for the filling of vacancies in the public service; so, even if the origin of this principle were to be not case-law, but a statutory provision, in Greece, again I would have adopted such principle; in doing so, I would, of course, not be treating Greek legislation as directly applicable in these proceedings, but I would be using such legislation as a guide for the purpose of deciding on an issue of administrative law arising herein; this course would have been open to me because, in the absence of any provision or established rule governing a particular issue, I would have, as a Judge of an administrative Court, to give to such issue a solution which appeared to be logical and just (see Dendias on Administrative Law (Διοικητικὸν Δίκαιον) 5th ed. Vol. A p. 72).

It is useful to refer, in relation to the principle in question, to the decisions of the Greek Council of State (Συμβούλιον Ἐπικρατείας) in Cases 723/38 and 923/55:

In the decision in Case 723/38 it is stated:–

«.......... ἡ δὲ προηγουμένη τοῦ αὐτοῦ ἄρθρου παράγραφος, ἡ καθορίζουσα τὰ ἀπαραίτητα προσόντα τοῦ Διευθυντοῦ, δὲν ὁρίζει, ὅτι δέον νὰ προσάγωνται τὰ περὶ αὐτῶν σχετικὰ δικαιολογητικὰ διὰ νὰ γίνῃ ὁ διορισμός, καὶ συνεπῶς ἡ Διοίκησις, ἥτις βεβαίως δικαιοῦται νὰ μὴ διορίσῃ τὸν μὴ προσκομίσαντα τὰ δικαιολογητικὰ τῶν προσόντων του, ὡς μὴ ὑπόχρεως νὰ ἐρευνᾷ αὐτεπαγγέλτως περὶ τῆς ὑπάρξεως αὐτῶν, δικαιοῦται ἐπίσης καὶ νὰ προβῇ εἰς τὸν διορισμὸν ἄνευ τῶν τοιούτων δικαιολογητικῶν, εἴτε ὡς γνωρίζουσα τὴν ὕπαρξιν τῶν προσόντων, εἴτε καὶ ἐπιβάλλουσα τὴν μεταγενεστέραν τῶν δικαιολογητικῶν αὐτῶν προσαγωγήν, ὡς ἐν προκειμένῳ ἔπραξεν.»

* Κῶδιξ Καταστάσεως Δημοσίων Διοικητικῶν Ὑπαλλήλων καὶ Ὑπαλλήλων Νομικῶν Προσώπων Δημοσίου Δικαίου.

("............. the preceding paragraph of the same section, which prescribes the essential qualifications for the post of Director, does not lay down that there should be adduced proof of such qualifications for the purpose of an appointment being made, and, therefore, the Administration, which, of course, is entitled not to appoint one who has not adduced proof of his qualifications, as it is not bound to inquire itself, on its own initiative, about their existence, may, nevertheless, make the appointment, without such proof having been adduced, either because it knows of the existence of the qualifications, or on condition that proof thereof will be adduced subsequently, as it was done on the present occasion.")

In the decision in case 923/55 it is stated:-

«'Αβασίμως δὲ προβάλλεται, ὅτι παρὰ τὸν νόμον ἐλήφθησαν ὑπ' ὄψει αἱ προσωπικαὶ ἀντιλήψεις τῶν μελῶν τοῦ Συμβουλίου, ἐφ' ὅσον ἐξ οὐδεμιᾶς διατάξεως νόμου ἀπαγορεύεται, ὅπως λαμβάνωνται ὑπ' ὄψει αἱ προσωπικαὶ ἀντιλήψεις ἐν συνδυασμῷ πρὸς τὰ οὐσιαστικὰ καὶ τυπικὰ προσόντα τῶν κρινομένων, ἅτινα, ὡς συνάγεται ἐκ τῶν ἐν τῷ φακέλλῳ ἐγγράφων, δὲν ἀντιτίθενται πρὸς ἐκείνας.»

(" It is erroneous to contend that contrary to law there were taken into account the personal views of the members of the Board, since it is not prohibited by any legislative provision to take into account personal views in conjunction with the material and formal qualifications of the persons who are being evaluated, which, as it is to be derived from the records in the file, are not inconsistent with such views").

Certain limitations are, of course, necessary regarding the application of the principle under consideration; so, in order to guard against possible abuses in the course of the application, by collective administrative organs, of such principle, it has been held as follows by the Greek Council of State in, *inter alia*, case 1809/58:-

" Καὶ ναὶ μὲν ἡ προσωπικὴ ἀντίληψις ἢ αἱ τυχὸν πληροφορίαι μελῶν τοῦ συμβουλίου περὶ τοῦ κρινομένου ἀποτελοῦσι νόμιμον στοιχεῖον κρίσεως, πλήν, ἐφ' ὅσον τὸ στοιχεῖον τοῦτο δὲν λαμβάνεται ὑπ' ὄψιν ὡς ἐνισχυτικὸν ἁπλῶς τῆς ἐπὶ τῇ βάσει τῶν στοιχείων τοῦ ἀτομικοῦ φακέλλου τοῦ κρινομένου μορφουμένης κρίσεως, ἀλλ' ὡς αὐτοτελὲς στοιχεῖον κρίσεως,

μὴ ἀνταποκρινόμενον εἰς στοιχεῖα τοῦ ἀτομικοῦ φακέλλου τοῦ ὑπαλλήλου, δέον τοῦτο ἐξειδικεύηται, ὑπὸ τὴν ἔννοιαν τῆς ἐν τῇ πράξει μνείας τῶν συγκεκριμένων πραγματικῶν περιστατικῶν, ἐξ ὧν συνήχθη ἡ προσωπικὴ ἀντίληψις ἢ προκειμένου περὶ πληροφορίας τῶν πραγματικῶν περιστατικῶν τῶν συνιστώντων τὸ περιεχόμενον ταύτης".

(" And though the personal views of, or information possessed by, members of the board, about a person who is being considered, constitute factors to be lawfully taken into account for the purpose of reaching a decision, nevertheless, if such factors are not taken into account in order merely to strengthen the view formed on the basis of the contents of the personal file of the person under consideration, but as independent factors not being in accord with the contents of the personal file of a public officer, then they should be recorded in detail, in the sense that there should be mentioned in the decision the specific facts on the basis of which a personal view was formed, or in case of information the specific facts constituting the content thereof").

In the present case it appears, from the material before me, *that the Respondent Commission has taken into account* personal views of its members regarding the ability and experience of the Interested Party as an administrator; and it has relied on his experience as an element tending to establish, inferentially, the possession by him of knowledge required under paragraph 1(c) of the relevant scheme of service.

It has expressly recorded in its minutes for the 19th October, 1967—which have already been quoted in this judgment—the factor which it took into account in his favour, on the strength, apparently, of personal views of its members, viz. the fact that the Interested Party between 1961 and the aforementioned date carried out "his administrative (and in present circumstances political) duties" as District Officer at Limassol "to an excellent degree".

It is quite clear, in my view, that the conclusion of the Commission about the Interested Party's merits as an administrator was not based solely, or even mainly, on the personal views of its members; because the contents of his personal file, which was before the Commission, constituted cogent proof of a very long and varied career in public

administration, from which it could be derived, to a much larger extent than on the basis only of his service as District Officer at Limassol, that he had the ability and experience as an administrator, which the Commission found him to possess on the basis, too, of personal views of its members about such service.

This is, therefore, a case in which the personal views of members of a collective organ—the Respondent Commission—which were taken into account regarding the ability, the experience and, inferentially, the knowledge of a candidate for appointment—the Interested Party—were consistent with the contents of his personal file; and, in any case, these views were not, as such, of a decisive importance, but they were weighed together with other, and more weighty, considerations; moreover the Commission recorded in its *sub judice* decision the factor on which the personal views of its members were based.

It is correct that the relevant statement in the decision of the Respondent Commission is a short one; but I do not think that it was necessary to go into any greater detail once the personal views of the members of the Commission were not in the least inconsistent, but, were on the contrary, fully consistent, with the conclusion to be drawn from the contents of the personal file of the Interested Party. It is useful, in this connection, to note that in its decision in case 1821/66 the Greek Council of State held that, even though by Article 101(γ) of the relevant Code in Greece, it is required that the personal knowledge of, or safe information possessed by, members of a collective organ about a candidate should be recorded in the minutes expressly and in detail ("ρητῶς καὶ λεπτομερῶς"), such a course is not necessary on an occasion on which the said knowledge and information are not of such special importance as to be of decisive influence or do not differ from what is to be derived, regarding a public officer, from the rest of the factors to be taken into account; as it was stated by the Council in its said decision:-

> " Διότι εἰς ἣν περίπτωσιν αἱ ἐν λόγῳ γνώσεις καὶ πληροφορίαι δὲν εἶχον ἰδιάζουσαν σημασίαν, ὥστε νὰ ἐπιδράσουν ἀποφασιστικῶς εἰς τὸν σχηματισμὸν τῆς κρίσεως τοῦ συμβουλίου ἢ δὲν παρέχουσι περὶ τοῦ ὑπαλλήλου εἰκόνα διάφορον τῆς παρεχομένης ἐκ τῶν λοιπῶν ληπτέων ὑπ' ὄψιν στοιχείων, ἡ ρητὴ καὶ λεπτομερὴς ἀναγραφὴ τούτων εἰς τὰ πρακτικὰ καθίσταται περιττή."

(" Because, in a case where the said knowledge and information are not of a special importance, so as to influence decisively the reaching of its decision by the board, or they do not present about a public officer a picture different than that presented by the rest of the factors to be taken into account, it is rendered unnecessary to record them expressly and in detail in the minutes").

With all the aforementioned considerations in mind I reached the view, which I have already expressed in this judgment, that the taking into account by the Respondent Commission of personal views of its members about the Interested Party does not constitute, in the light of the particular circumstances of this case, a sufficient reason for annulling the Interested Party's *sub judice* appointment.

Having quoted the material parts of the relevant minutes of the Respondent Commission, having referred at some length to the developments which occurred during the course of the hearing of this case and having dealt with some issues arising as a result thereof, I think that the proper stage has now been reached for the purpose of dealing with the already mentioned submission of counsel for the Applicant to the effect that it was not open to the Commission, on the material before it, to find that the Interested Party possessed the qualification specified in paragraph 1(c) of the scheme of service for the post concerned viz. an all-round education and a wide knowledge of political, financial and international affairs.

It is necessary to examine what is exactly the standard of such education and knowledge: For this purpose sub-paragraphs (a) and (c) of paragraph 1 of the scheme of service have to be read together. The contents of sub-paragraph (c) have already been referred to and need not be repeated; sub-paragraph (a) provides, in effect, that a candidate is eligible for appointment if he has *either* a diploma or degree of a university or of an equivalent institution, or he is a barrister-at-law, preference to be given, where all other qualifications are of equal nature, to those who possess a diploma or degree in law (including being barrister-at-law), in political science or in economics, *or* general education of a level not below that possessed by graduates of secondary schools, and, in addition to such education, a long and satisfactory service in the public service.

("Δίπλωμα ἢ τίτλος πανεπιστημίου ἢ ἄλλης ἰσοτίμου σχολῆς ἢ Barrister-at-Law προτιμήσεως διδομένης ἐν περιπτώσει ἴσων ἄλλων προσόντων, εἰς τοὺς κατόχους διπλωμάτων ἢ τίτλων νομικῶν (συμπεριλαμβανομένων τῶν Barrister-at-Law) πολιτικῶν ἢ οἰκονομικῶν ἐπιστημῶν ἢ

Γενικὴ μόρφωσις ἐπιπέδου οὐχὶ κατωτέρου ἀπολυτηρίου σχολῆς μέσης ἐκπαιδεύσεως, ἐπιπροσθέτως δὲ μακρὰ καὶ εὐδόκιμος ὑπηρεσία εἰς τὴν Κυβερνητικὴν Ὑπηρεσίαν").

By reading together sub-paragraphs (a) and (c) of paragraph 1 of the scheme of service it becomes clear, in my view, that the all-round education and the wide knowledge of political, financial and international affairs required under the latter sub-paragraph cannot be anything that is beyond the educational background of a candidate who is eligible by virtue of the second part of the former sub-paragraph viz. one who has general education of secondary school level and has had a long and satisfactory service in the public service; it is not reasonably possible to hold that the Council of Ministers, when it adopted the scheme of service on the 15th June, 1967, intended to introduce by means of the vague terms in which sub-paragraph (c) is framed any requirement for special qualifications incompatible with the minimum of the educational qualifications which were defined, in very precise terms, in sub-paragraph (a); in other words, the education and knowledge required under sub-paragraph (c) cannot be more than that which a person possessing the minimum of the educational qualifications specified in paragraph (a) can acquire, in the ordinary course of life, through relevant reading and experience and without any special studies for the purpose; otherwise the second part of sub-paragraph (a) should have been omitted altogether.

Bearing in mind the foregoing I shall deal now with the application to the facts of the present case of the provisions of the said sub-paragraph (c):

The Interested Party was found by the Respondent Commission to be the most suitable candidate for appointment; and as it is abundantly clear from the minutes of the Commission for the 19th October, 1967, that in evaluating the candidates the Commission had duly in mind the provisions of paragraph 1(c) of the scheme of service there is no doubt that the Commission did find that the Interested Party satisfied the relevant requirements.

As stated in the written statement of the Chairman of the Commission, of the 9th November, 1968 (*exhibit* 8)—(which was produced with the consent of counsel for the Applicant in reply to a request by such counsel to be informed as to how the Commission felt satisfied that the Interested Party possessed the qualifications prescribed by paragraph 1 (c)) — the Commission relied in this respect mainly on the answers given by the Interested Party, to a multitude of questions, put to him when he was interviewed by the Commission.

In my opinion, in view of the already described standard of the education and knowledge required under the said paragraph 1(c), it was possible to ascertain possession thereof by means of thorough questioning at an interview.

Also, it seems that during the interview the Commission came to know—if this fact was not known already to any of its members—that the Interested Party was the representative of the Republic of Cyprus in various Committees, formed under the Treaty of Establishment, which was signed between the United Kingdom, Greece, Turkey and Cyprus, on the 16th August, 1960, and that reliance was placed on this factor in relation to finding the Interested Party to be duly qualified; indeed, for any public officer to have been selected for appointment as a member of Committees formed for purposes of implementation of the provisions of such Treaty (and of its Annexes) he ought to possess education and knowledge of the kind required by paragraph 1(c) of the relevant scheme of service; and such an officer would be bound to acquire quite a lot more of such knowledge in the course of his work as a member of the said Committees.

Lastly, the Commission took into account, in this connection, the long and wide experience, as well as the efficient performance, of the Interested Party in the course of his career in public administration. In my view, even if one were to leave aside the work done by the Interested Party as District Officer at Limassol (in relation to which the Commission relied *also* on personal views of its members, and I have underlined the word "*also*" because it must be reasonably presumed that in the normal course of events the Interested Party was asked and spoke, at the interview, about this aspect of his career), the efficient performance by the Interested Party in carrying out a great variety of administrative assignments prior to his appointment as District Officer at Limassol, as

such performance, is amply shown by the contents of his personal file, does provide good cause for finding that the Interested Party did possess education and knowledge of the kind required under paragraph 1(c) of the scheme of service.

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In the light of all these considerations I have reached the conclusion that it was reasonably open to the Respondent Commission to treat the Interested Party as qualified under paragraph 1(c) of the relevant scheme of service and that, in the circumstances, I am not entitled to interfere with its finding in this respect (see, *inter alia*, *Josephides* and *The Republic*, 2 R.S.C.C. 72). It might be added, and it is not in dispute, that, on the basis of his qualifications, the Interested Party met the requirements laid down by all the other provisions in the said scheme of service.

I shall deal, next, with the contention that the Respondent; in the absence of recent confidential reports about the Interested Party and in the absence of any recommendation, by his superiors, for his appointment to the post concerned, ought to have requested from them an up-to-date report about him:

It is correct that Stasinopoulos in his book "Lectures on Administrative Law" ("Μαθήματα Διοικητικοῦ Δικαίου"), 2nd ed. (1957) at p. 347, points out that a promotion cannot be effected lawfully on the basis of reports about an officer which relate to the distant past and that, in such a case, there must be requested that the necessary reports be prepared; and he makes reference to the decisions of the Greek Council of State in cases 136/31 and 267/33.

These two cases in Greece were decided in factual and legal situations different from that in the present case and they are, therefore, clearly distinguishable therefrom; they are quite helpful, however, in the sense that they indicate that what has been set out, as aforesaid, by Stasinopoulos by way of a general proposition—and I am in agreement with it in principle—should be treated as being applicable in cases in which the absence of recent confidential reports has a material influence on the outcome of the relevant administrative action (as in case 136/31) or a collective organ considers that such reports are necessary in order to enable it to form an opinion about the efficiency and progress of a public officer (as in case 267/33).

In the present case the application for appointment of the

Interested Party was forwarded, to the Respondent Commission, without any comment, by his immediate superior, the Director-General of the Ministry of Interior (*exhibit* 4); I have no doubt that if there was anything against the Interested Party, which rendered him unsuitable for appointment to the post of Director-General of the Ministry of Foreign Affairs, his said superior would have drawn the attention of the Commission to it, in forwarding the application of the Interested Party; so, it may be taken that nothing of this nature existed. Nor was it necessary for the Commission to know about the progress in the public service of the Interested Party since the last confidential report on him, which was in 1959, because it had before it the personal file of the Interested Party and its contents established clearly that by, already, 1960 the Interested Party was a public officer possessing to a very high degree the ability and experience that would render him suitable for appointment.

For these reasons I am of the view that it was reasonably open to the Respondent Commission to proceed to reach its *sub judice* decision without requesting any further report about the Interested Party, from his superiors, and that the failure of the Commission to call for such a report did not, and could not, in the light of the circumstances of the present case, affect, in the least, in a material respect, the outcome of the process which led to such decision.

There remains, lastly, to decide whether or not, by selecting for appointment the Interested Party, instead of the Applicant, the Respondent Commission exercised in a defective manner its relevant discretionary powers:

It is a fact that the Applicant was already in the service of the Ministry of Foreign Affairs, whereas the Interested Party was not and was serving in another branch of the public service; moreover, it is correct that the Applicant was more qualified academically than the Interested Party; and he knew German, in addition to French, which both the Applicant and the Interested Party seemed to know; thus, the Applicant possessed more additional qualifications, in the sense of paragraph 1(b) of the scheme of service, which provides that knowledge of one or more of the main European languages, other than of those required in any case (the mother-tongue of the candidate and English), is to be considered as an advantage.

On the other hand, the Interested Party had in his favour a varied, and very much longer than the Applicant's, administrative experience in the public service and had served at posts in such service which entailed the supervision of personnel to a much larger extent than the public service posts at which the Applicant had served; it is true, however, that the Applicant must have gained some administrative experience, and particularly as regards personnel matters, while being, before he entered the public service, in the employment of the Hellenic Mining Co., Ltd.; his service with the Bank of Cyprus, Ltd. was of such short duration and so many years ago that I am inclined to the view that it is not really a factor of real significance.

Having in mind all the foregoing matters, as well as all other relevant considerations concerning the Applicant and the Interested Party such as the fact that the Interested Party but not the Applicant, too, had passed various public service examinations, I find, in the light, also, of the duties of the post in question, which require to a very large extent administrative experience and ability, that it was reasonably open to the Respondent Commission to select for appointment the Interested Party and that no ground exists entitling, or requiring, me to interfere with the result of the exercise of its discretion in this connection; in taking this view I have adopted what has been stated repeatedly to be the proper judicial approach to a matter of this nature (see, *inter alia*, *Triantafyllides* and *The Republic* (reported in this Part at p. 235 *ante*) and *Ch. Georghiades* and *The Republic* (reported in this Part at p. 257 *ante*), and the case-law referred to therein).

Before concluding I might refer, also, in this respect, to case 2338/64 which was decided by the Greek Council of State; it was stressed therein that in selecting the most suitable candidate for appointment to high office in the administrative structure the appointing authority is vested with quite wide discretionary powers.

For all the reasons that I have stated in this judgment the present recourse fails and it is dismissed accordingly; but, bearing in mind, all the circumstances of this case, and particularly the fact that the Applicant, in view of his many academic qualifications and of his being already, at the material time, in the service of the Ministry of Foreign Affairs, must

have felt, and naturally so, aggrieved by the appointment of the Interested Party—who was an outsider as regards such service and less qualified academically—and that he was, therefore, entitled to place his grievance before this Court for judicial examination and determination, I am not prepared to make any order as to costs.

Application dismissed.
No order as to costs.